

Approved For Release 2004/10/28 : CIA-RDP81M00980R000800040067-7

12-6-78

10 MAR 1978

MEMORANDUM FOR: Legislative Counsel

ATTENTION :

THROUGH :

Comptroller

SUBJECT :

Intelligence Charter Legislation

1. Organization of the intelligence apparatus is a fundamental question giving rise to many of the separate issues identified with regard to the Senate Bill. The original intent of the National Security Act of 1947 was to create a central intelligence authority not at all unlike that now to be created by S-2525. The DCI was to fulfill the duties and responsibilities now ascribed to the DNI, and the CIA was to support him in so doing. The failure of the original Act was that the DCI was not given the clout necessary to permit him to do the job assigned to him. "Clout" is now being defined as DNI. The issue seems to be whether the DCI and CIA are going to be given the clout to do the job originally intended, or failure of that concept is going to be acknowledged and a new hierarchical element superimposed over the old with allocation of the clout going to the new superstructure. Creating a DNI and assigning him dual responsibility of DCI will not accomplish the purpose; it merely raises the level of ambiguity and compounds it. We continue to believe that the concept of a DNI, creating as it does merely another bureaucratic layer, should be resisted and we should push for strengthening the existing structure, with title changes if they improve the aesthetics.

2. Regardless of how the discussion of these points may come out, we do not believe the intelligence apparatus should function under the "direction and control" of the National Security Council. Direction and control are basic text book elements of management. Use of the words in the context of the Bill clearly implies a managerial role for the NSC that we do not believe should be ascribed to it. A related issue is the different relationships with the NSC prescribed for other Community elements. Section 111 (a) says that entities of the Community are authorized to conduct, under the direction and control of the NSC. Section 504(b) puts the FBI under the Attorney General and says he will be guided by the NSC. Section 611(c) puts NSA under direct supervision and control of the Secretary of Defense and says he shall comply with policies, etc., of the NSC. Clearly there are basic inconsistencies among these sections.

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The Attorney General will be "guided by" and the Secretary of Defense "shall comply with" policies of the NSC when treated as individual agencies, but will function "under direction and control" when treated as "entities of" the Community. "Guided by" may be too innocuous to give the Director the clout necessary to make the Community function. Direction and control imply a management responsibility probably not intended. Probably the "shall comply with" language or simply "under direction" should apply throughout.

25X1 3. ☐ There follows a commentary keyed to specific issues of particular concern to this office listed in the attachment to ☐ memorandum of 23 February 1978. 25X1

Issue 19. We see no need for budgetary services to be included in the list of services in Section 421(a)(8). Budgeting is a normal and necessary function inherent in any government activity and does not require specific legislative authority.

Issue 23. It would be advantageous to include the budget in the list itemized in Section 421(g). The budget, of course, contains specific information about the organizational structure and numbers of people employed. Both of these items are included in the prohibited list. Since it would be impossible to publish the budget without disclosing them, the argument can be made that specifically listing the budget is not necessary.

Issue 30. The word lawful should be deleted for the reason you cite.

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Issue 31. Whether inclusion of the "extraordinary and emergency nature" language offers anything that its absence denies is moot. Without knowing the legislative history of the National Security Act, one might speculate that inclusion of that language originally may have been intended to cover eventualities that subsequently led to the establishment of the Reserve. Emergencies related to the normal activities of the Agency can be met by reprogramming if funds are available, or by withdrawal from the Reserve for Contingencies. While it would be useful to develop a record to reinforce the understanding that reprogramming or the Reserve can be used for emergencies, we can see no solid justification for making an issue of the need for specific language.

Issue 32. The implication of Section 425(b) is that the Agency will have two kinds of funds: those that may be accounted for on the certification of the Director and those that are not, but are accounted for in some other way. We believe the introductory clause of this subsection—"Whenever the Director determines such action to be necessary in the interest of the national security"—should be eliminated. The accounting system of the Agency is not, and cannot readily be, structured to separate one kind of funds from another; nor is it practical to budget for them separately. If we have to report quarterly, we should report on the full appropriation, not just the confidential funds authority. Your alternate language apparently is intended to accomplish this purpose, but it is not clear why you have eliminated the Permanent Select Committee of the House as a recipient of the report. If the introductory phrase must stay, the term "national security" should be deleted and "security of intelligence activities" substituted therefor.

Issue 33. Disclosure to OMB of the facts and circumstances of proposed expenditures of funds released from the Reserve is not the problem. OMB is thoroughly briefed and well acquainted with the purposes for which funds are to be used before they approve the release. To require OMB approval of individual expenditures is totally impractical and an unacceptable insertion of OMB into Agency and project management. Reserve releases are not ordinarily expended in lump sum. Most activities funded from the Reserve have all of the management characteristics of any undertaking and involve a wide variety of expenditures. Travel, transportation, goods and services, communications, rents, and virtually every other class of activity necessary to mount and manage an operation is funded from any given Reserve release. If the intent of the language is merely to ensure that OMB knows how the funds are to be used and what for, it would be telling OMB how to do its job. But it might be acceptable to say: "the withdrawal of funds from the Reserve fund has been approved by the Office of Management and Budget consistent with criteria and standards applied in the normal budget review process." Our preference would be simply to say: "(A) the withdrawal of funds from the Reserve has been approved by the Office of Management and Budget."

Issue 34. Reporting, notification, and Presidential Finding requirements of Section 131 render redundant any reporting of facts and circumstances under Section 425(c)(1)(B) when a Reserve release is to fund a special

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activity or clandestine collection activity requiring Presidential approval. When a release is for repair of a storm damaged antenna field or the evacuation of an overseas installation, reporting facts and circumstances may be of less concern, but the Committees will still want to know what the funds are to be used for. We would prefer to continue the present practice of notifying the Committees by letter of the fact of a withdrawal, offering an oral briefing on the substance, if desired. This serves the Committee's purposes but restrains the growth of written materials about sensitive activities with the accompanying growth potential for disclosure.


Inclusion of the words "and proposed expenditure" is unnecessary and confusing in the context of this subsection (line 12). There would be no withdrawal if there were not a need for an expenditure. Notification of a withdrawal is in itself a notification of a proposed expenditure.

The requirement in Section 425(c)(1)(C) that "the purpose for which such money was used requires protection from unauthorized disclosure" is an unnecessary and undesirable constraint. (Incidentally, the tense is wrong--"was used" implies a judgment after the fact and presumably would require restoration if the subsequent judgment were to be that protection against disclosure was unnecessary.) Restoration or relocation of a known CIA installation required by natural disaster might require funding from the Reserve because we have no way of obtaining a supplemental appropriation.

The word "specific" should be deleted from Section 425(c)(2), lines 11 and 13. Its use implies a single, or lump sum expenditure, and funds are not ordinarily expended in that way, as discussed earlier.

Section 425(c)(3) also is an unnecessary and undesirable restriction. There are times when funds are used in an exploratory way to determine the desirability of proceeding further. At the time the exploration is begun, there is no way of knowing whether additional funds will be required, or when they will be needed. Part of the exploration may, in fact, be for the purpose of learning whether, how much, and when additional funds will be needed if the undertaking proves feasible. There is no way to anticipate whether funds from the Reserve will be required. We should not be deprived use of the Reserve to fund opportunities disclosed by exploration or research.

4. ☐ The first six paragraphs of this memorandum are intended to serve as our commentary on issues 2, 4, 5, 8, 9, 12, and 13. Comment on other issues is left for components most directly concerned. Other Titles of the Bill will be dealt with separately.


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